IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6807 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

KISHORBHAI NAGINBHAI PARMAR: Petitioner.

Versus

STATE OF GUJARAT & Others: Respondents.

Appearance:

MR HR PRAJAPATI for Petitioner

Mr. S.P. Dave AGP for Respondents.

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 02/12/97

ORAL JUDGEMENT

By this application under Article 226 of the Constitution of India,the petitioner calls in question the legality and validity of the detention order, passed by the Police Commissioner of Baroda city on 3rd August 1997, invoking the powers under Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act,1985 (hereinafter referred to as `the Act').

2. The facts which led the petitioner to prefer this application may in brief be stated. About two complaints

for the offences under Section 66B, 65-E & 81 of the Prohibition Act, and third complaint for the offences punishable under Section 452, 427, 506(2), 294, 323, 114 read with Section 135 of the Bombay Police Act came to be lodged with the Panigate police station, Baroda, while fourth complaint for the offences under Section 66B, 65-E, 81 of the Prohibition Act came to be lodged with Nashabundi police station Baroda, alleging that the petitioner was dealing in country made liquor. During the course of investigation the police found that the petitioner was dealing in liquor in huge quantity and was supplying and selling to different sections of the people which was injurious to the public health. He was thereby not only making the society weak but was leading to devastation of several families also. Because of such activities hooch tragedies were often occurring leading to massacre. Whenever some of the persons tried to crub his activities, he used to assault with deadly weapon and cause injury. He was thus striking terror and was carrying out his activities putting the public to perilous situation. No one was therefore ready to come forward and state against him. After great persuation and when assurance was given that the facts about them disclosing their identity would be kept secret, some of the witnesses have under great tension stated against the petitioner. After a deep inquiry, the Police Commissioner found that to curb the anti-social activities of the petitioner upsetting the public order and leading to anarchy there was no way out but to detain him, as under general law it was difficult to control his activities taking appropriate actions. He therefore passed the order in question on 3rd August 1997, consequent upon the same the petitioner came to be arrested.

3. The petitioner has challenged the legality and validity of the order on different grounds. According to him, there is no justification to describe him as a head-strong person or a dangerous person. Necessary bail papers were not given to him for making effective representation though the petitioner was released on bail. After he was released on bail by the court, the detention order was passed, and it was only with a view to see that he was put behind bars any how. The order passed is therefore malafide. Further, assailing the order it is submitted that the particulars about the witnesses who had given the statement against him ought to have been furnished to him so as to make effective representation. There was no justification to suppress the same, because for the same the requirements of Section 9(2) of the Act were not satisfied. He thus

assail on the ground of non-supply of better particulars also.

4. It would be better if the law about the non-disclosure of certain facts is elucidated. Reading Article 22(5) of the Constitution of India, what becomes clear is that the grounds on which order of detention is passed are required to be communicated to the detenu. The detenu is therefore required to be informed not merely factual inference and factual material which led to inference namely not to disclose certain facts but also the sources from which the factual material is gathered. The disclosure of sources can enable the detenu to draw the attention of the detaining authority in the course of his representation to the fact whether the factual material collected from such sourses would be relied upon and used against him on the facts and circumstances of the case. Subject to the limitation mentioned in Article 22(6) of the Constitution of India and Section 9(2) of the Act, the detaining authority is of course empowered to withhold such facts and particulars, the disclosure of which he considers to be against the public interest. The privilege of non-disclosure has to be exercised sparingly and in those cases where public interest dictating non-disclosure overrides the public interest requiring disclosure. Hence the detaining authority must be fully satisfied on the basis of overall study that the apprehension expressed by the informant is honest, genuine and reasonable in the circumstances of the case. With a view to satisfy itself whether the fear of violence and consequential feelings of insecurity or apprehension of a wrong would be done to them at any time by the detenu by those making statement against the detenu is imaginary or fanciful; or an empty excuse or well-founded for disclosing or not disclosing certain facts or particulars of those persons the authority making the order has to make necessary inquiry applying his mind. What can be deduced from such constitutional as well as legal scheme whereunder obligation to furnish the grounds and the duty to consider whether the disclosure of any facts involved therein is against public interest are both vested in the detaining authority and not in any other. The authority passing the order of detention has to apply his mind and should itself be satisfied to the question whether or not the supply of the relevant particulars and materials would be injurious to the public interest. If the task of recording statements & necessary inquiry is entrusted to others and if he mechanically endorses or accepts the recommendation of others or subordinate authority in that behalf without applying mind and taking his own decision

the exercise of power would be vitiated as arbitrary. What is further required is that the detaining authority must file his affidavit to satisfy the court that he had sincerely and honestly applied the mind for the bonafide exercise of the powers about disclosure and privilege regarding non-disclosure so that the court can examine rational connection between the ground disclosed or not disclosed in public interest. If no affidavit explaining the exercise of the power is filed, the court can infer against the detaining authority. If the affidavit is filed explaining the exercise of the power, the detenu may challenge the privilege exercised on the ground that the same is vitiated by factual or legal malafides. For my such view, a reference to a decision in the case of Bai Amina, w/o. Ibrahim Abdul Rahim Alla v. State of Gujarat and others - 22 G.L.R. 1186 held to be the good law by the Full Bench of this court in the case of Chandrakant N. Patel v. State of Gujarat & Others - 35 (1) [1994(1)] G.L.R. 761, may be made.

5. In view of such law made clear hereinabove the order is not passed. Reading the contents of the order produced vide Annexure A, it is abundantly clear that Commissioner of Police did not try to satisfy himself by application of mind to the attending circumstances. He entrusted the work for being satisfied to Assistant Police Commissioner `A' Division, Vadodara and it seems he mechanically accepted the opinion formed by the Assistant Police Commissioner in his report. Of course it is open to him to entrust the task on inquiry and have a report, but in that case he has to study the facts and decide whether or not to exercise privilege. He has not considered whether the opinion formed by the Assistant Commissioner was honest genuine, & reasonable; and not imaginary or illbased, or guided by any prejudices or isms or caprice or irrelevant forces or factors or conjectures, and fear expressed is not fanciful or empty excuse which is is in law supposed to for being personally satisfied. When there is no personal satisfaction by necessary application of mind for the exercise of the discretionary power, it can be said that the facts suppressed is without any just cause or well based consideration. The particulars ought to have been given. When that is not done the right of the petitioner to make effective representation was marred. In view of the fact, the continued detention is illegal. The order of detention is therefore bad in law. The same is therefore cannot be maintained, it is required to be quashed.

6. For the aforesaid reasons, the order of detention

dated 3rd August, 1997 being illegal and invalid is hereby quashed. The petitioner is ordered to be released forthwith if no longer required in any other case. Rule accordingly made absolute.

.....